

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of T. E. COOMBES, Minor.

UNPUBLISHED

March 4, 2014

No. 316988

Wayne Circuit Court

Family Division

LC No. 06-456989-NA

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Before: HOEKSTRA, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

In docket no. 316988, respondent mother appeals as of right the trial court order terminating her parental rights to her minor son pursuant to MCL 712A.19b(3)(c)(i) (conditions that lead to adjudication continue to exist), (g) (failure to provide proper care or custody), (i) (parental rights to the child's sibling were terminated due to serious and chronic neglect or abuse), (j) (reasonable likelihood child will be harmed), and (l) (parent's right to another child were terminated under section 2(b)).

In docket no. 316989, respondent father appeals as of right the same order, which terminated his parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that lead to adjudication continue to exist), (g) (failure to provide proper care or custody), (h) (parent is imprisoned and child will be deprived of normal home for over two years), and (j) (reasonable likelihood child will be harmed).

These cases were consolidated on appeal. We affirm in both dockets.

**I. FACTUAL BACKGROUND**

The minor child was less than two years old when respondent mother was in a car accident on September 25, 2011. She was under the influence of drugs at the time of the accident, and the police discovered that the child had been left home alone. Respondent father was incarcerated at the time and remained so during the pendency of the proceedings. The trial

court authorized the petition to be filed and took jurisdiction over the minor, who was placed with a paternal relative.

The termination proceedings culminated in a termination hearing beginning on April 5, 2013. The evidence presented established that both respondents had a long history of criminal activity and substance abuse. Respondent father admitted to his sister that he knew respondent mother used heroin when pregnant with the minor. His sister also testified that after the minor was born, she was informed that both respondents were using crack cocaine and neglecting the minor.

Both respondents also have an extensive history with petitioner. Respondent father testified that he was released from prison in 2008, but a petition to terminate his rights parental rights to his older daughter already had been filed. He admitted that during those proceedings he told the court that he was turning his life around. While respondent mother's rights to this child were terminated, respondent father's were not. The court granted a guardianship to afford him the time to position himself so that he could raise his daughter. However, respondent father admitted to relapsing with cocaine, and was incarcerated in 2011 for a term of 3 to 25 years for fleeing and eluding, resisting and obstructing, and breaking and entering.

The paternal relative caring for the child testified that she was willing to adopt the child and favored terminating respondents' rights. She also testified that respondent father revealed his intent to "play like he wants to get divorce[d]" from respondent mother so the court would "look at them separately for termination." The foster care worker also favored termination and testified that the minor was developmentally delayed when he came into petitioner's care. She opined that respondent father had been unable to complete his treatment plan, as not all services were available in prison, and that there was no evidence he would be able to safely plan for the minor within a reasonable time. She also indicated that terminating respondent mother's parental rights was in the child's best interests because she had not completed the treatment plan and showed no benefit from parenting classes.

In regard to respondent mother, the trial court found clear and convincing evidence of MCL 712A.19b(3)(c)(i) (conditions that lead to adjudication continue to exist), (g) (failure to provide proper care or custody), (i) (parental rights to the child's sibling were terminated due to serious and chronic neglect or abuse), (j) (reasonable likelihood child will be harmed), and (l) (parent's right to another child were terminated under section 2(b)). In regard to respondent father, the trial court found clear and convincing evidence of MCL 712A.19b(3)(c)(i) (conditions that lead to adjudication continue to exist), (g) (failure to provide proper care or custody), (h) (parent is imprisoned and child will be deprived of normal home for over two years), and (j) (reasonable likelihood child will be harmed). The court also found that termination of respondents' parental rights was in the minor's best interests. Both respondents now appeal.

## II. STATUTORY GROUNDS

### A. STANDARD OF REVIEW

On appeal, respondent father argues that the trial court erred in finding that the statutory grounds for termination were established.<sup>1</sup> We review for clear error the trial court's ruling that a statutory ground for termination has been established by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

B. MCL 712A.19b(3)(c)(i)

MCL 712A.19b(3)(c)(i) provides for termination when the trial court finds by clear and convincing evidence that:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Respondent father contends that the trial court erred in its ruling because the conditions that led to the adjudication no longer existed. However, the conditions that led to the child's adjudication with respect to respondent father were his ongoing drug use and incarcerations. He still was incarcerated at the termination hearing. Although the trial court found that respondent father had participated in services available in prison and had benefited to a certain degree, the court also noted that only certain services were available, and that respondent father would need additional time after his release to position himself toward providing for his son. Moreover, while respondent father focuses on his earliest release date in December 2014, that is a mere possibility. According to the testimony at the termination hearing, his maximum release date is 2046.<sup>2</sup>

Furthermore, while he may wish otherwise, respondent father's extensive criminal and substance abuse history was relevant in determining whether there was a reasonable likelihood the conditions leading to adjudication would continue to exist, especially in light of the child's age. MCL 712A.19b(3)(c)(i). While respondent father claims to have turned his life around, he has said that before, particularly in the termination proceedings involving his older daughter in 2008. The trial court granted respondent father the opportunity to match actions with words, and ordered a guardianship for his older daughter. However, despite his proclamations of reform, respondent father continued on the path of drug use and criminal activity and was incarcerated in 2011.

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<sup>1</sup> Only respondent father raises this issue on appeal.

<sup>2</sup> While this was the date indicated at trial, the Department of Corrections lists respondent father's maximum release date in 2047.

Thus, the trial court did not err in finding that the conditions leading to adjudication continued and there was not a reasonable likelihood that they will be rectified within a reasonable time considering the minor's age. MCL 712A.19b(3)(c)(i).

C. MCL 712A.19b(3)(g)

The trial court also terminated respondent father's rights under MCL 712A.19b(3)(g), which provides a statutory basis for termination when the trial court finds by clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Respondent father contends that he provided the requisite proper care or custody for his son through the paternal relative who was caring for the child. However, the record does not establish that respondent father arranged for the paternal relative to care for the child. Instead, respondent father left the child in the care and custody of respondent mother, despite knowing of the unfit home environment. He knew that her rights to their older daughter were terminated, that she had a severe drug problem and even used drugs while pregnant, and that she became violent when she used drugs. Despite such knowledge, he made no provisions for his child to be placed elsewhere. Instead, respondent mother voluntarily placed the child with a paternal relative after petitioner became involved. Thus, respondent father's contention that he provided proper care or custody of the child by placing him with a paternal relative is baseless.

Further, the trial court did not err in finding that respondent father would not be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712a.19b(3)(g). Respondent father proposes that he could provide proper care and custody of the minor through a guardianship arrangement with his paternal relative. See *In re Mason*, 486 Mich 142, 163; 782 NW2d 747 (2010) (a "respondent could fulfill his duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives during his remaining term of incarceration."). However, the parental relative testified that she favored terminating the parental rights of both respondents, although she would comply with whatever the court ordered. She also testified that she tried to convince respondent father that terminating his parental rights was proper, but that he would not discuss it further as they disagreed. Moreover, as discussed above, although the trial court found that respondent father had participated in services available to him in prison, it also found that respondent father had a history of repeated incarcerations and would need additional time after his release to position himself toward providing for his son.

Therefore, the trial court did not clearly err in finding clear and convincing evidence that respondent father failed to provide proper care or custody and there was no reasonable expectation of him doing so within a reasonable time considering the child's age. MCL 712A.19b(3)(g).<sup>3</sup>

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<sup>3</sup> The trial court also terminated respondent father's parental rights pursuant to MCL 712A.19b(3)(h) and (j). Because only one statutory ground for termination need be established,

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

Both respondents challenge the trial court's finding that termination was in the child's best interests. We review for clear error the trial court's finding that termination was in the child's best interest. *In re Hudson*, 294 Mich App at 264. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

#### B. ANALYSIS

The trial court did not err in its best interest's analysis. The finding that termination is in the best interests of the child must be proved by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).<sup>4</sup> The court may consider the child's bond to the parent, the need for permanency, stability, and finality, *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), as well as a respondent's history, psychological evaluation, and parenting techniques, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Respondent father argues that the trial court erred in finding that termination was in the child's best interest because the minor had been placed with a paternal relative, and a guardianship was preferable. The trial court properly recognized that the minor was placed with a relative, which was a special consideration. *In re Mason*, 486 Mich at 164. However, the court went on to find that:

The fact is that given [the minor's] age and given the chaotic history of his parents and their issues with substance abuse, with criminal activity and convictions, given all of those things, and given what I consider to be [the minor's] need for permanency - - permanency that he can count on, I think this record is fairly clear and very convincing that those interests would be best served by terminating the rights of [respondents].

As the trial court recognized, the minor in this case was in need of permanency and finality, which was best achieved through termination. *In re Olive/Metts*, 297 Mich App at 41-42. While respondent father may have advocated for a different outcome, the trial court properly focused on what was in the best interests of the minor. The court acknowledged that it had previously granted a guardianship to respondent father with his older daughter, which resulted in further turmoil for that child when respondent father suffered a drug relapse and was incarcerated yet again. Further, the trial court astutely recognized that while respondent father seemed able to manage himself in prison, the issue was his continually destructive behavior when released from

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we decline to address the alternate grounds for termination. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

<sup>4</sup> While respondent mother states that she "disputes this lower burden," she also acknowledges this Court's holding in *In re Moss*, and that the Michigan Supreme Court has denied leave to appeal.

prison, and the impact that would have on the minor. The foster care worker also recommended termination because respondent father was unable to complete his treatment plan and “there is no evidence to suggest that he would be able to plan for [the minor] in a timely manner or be a safe or appropriate placement for him.”

We also reject respondent mother’s argument that the trial court erred in finding that termination of her parental rights was in the child’s best interests. She highlights evidence that she progressed in her treatment plan and had a strong bond with the child. However, as the trial court observed, her stepfather foretold that there would be periods of time when respondent managed to get herself together. Thus, rather than a lasting improvement, this very likely was consistent with her pattern of behavior. The foster care worker also testified that respondent mother was referred multiple times for parenting classes, no appreciable benefit resulted from such classes, she had missed several parental visitation appointments, and she was not fully compliant with her treatment plan. See *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted) (“If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent.”). Thus, despite any measured progress respondent may have made, the trial court did not clearly err in finding that the child’s best interests were best served with the finality and consistency of termination. *In re Olive/Metts*, 297 Mich App at 41-42.

To the extent that respondent mother suggests that the trial court should have ordered a guardianship, the relative caring for the child testified that she would not consider a guardianship unless respondent mother’s rights were terminated. While respondent mother suggests that the relative was “threatening the court,” the relative was merely communicating her belief that such an arrangement would not work as she believed respondent mother would attempt to isolate the minor from respondent father’s family.

Based on the foregoing, we find that the trial court did not clearly err in finding that the child’s best interests were served through terminating respondents’ parental rights.

#### IV. CONCLUSION

The trial court did not clearly err in terminating both respondents’ parental rights. We affirm in both dockets.

/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray  
/s/ Michael J. Riordan